



The Commonwealth of Massachusetts

Office of Campaign & Political Finance

One Ashburton Place, Boston 02108

727-8352

AO-20

October 21, 1982

Dennis J. Duffin
Director

Thomas J. Wynn, Esquire
Treasurer
Massachusetts LAW PAC
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P.O. Box 32
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Dear Mr. Wynn:

This letter constitutes my formal opinion as to the propriety under M.G.L. c. 55 of certain proposed procedures for the solicitation of contributions to the Massachusetts Law Political Action Committee, as per your request of October 6, 1982.

M.G.L. c. 55, Section 7 states that;

"A political committee or a person acting under the authority of or on behalf of such a committee may receive money or its equivalent, expend or disburse or promise to expend or disburse the same for the purpose of aiding or promoting the success or defeat of a candidate at a primary or election or a political party or principle in public election or favoring or opposing the adoption or rejection of a question submitted to the voters, and for other purposes expressly authorized by this chapter subject, however, to the provisions thereof."

Section 8 explicitly prohibits business corporations incorporated under the laws of or doing business in the Commonwealth from making contributions or expenditures relative to the nomination and election of candidates. While c. 55 does permit associations, and G.L. c. 180 corporations, which are not defined as political committees to participate in campaign finance activity, it is apparent that an association itself cannot do that which its members would be prohibited from doing. As was stated in Opinion of the Attorney General, Nov. 6, 1980 (footnote 10), "...the prohibition contained in Section 8 extends to the facilities of an association of which the corporation is a dues paying member. The prohibition extends to both direct or indirect expenditures or contributions. If a corporation cannot directly provide facilities to a candidate or committee by virtue of the statute, it may not be so indirectly through the associations to which it belongs..." Thus, since the membership of the Massachusetts Bar Association is comprised

partly of business corporations, the MBA is thus prohibited from engaging in the type of campaign finance activity which its corporate members may not engage in. Therefore, the Massachusetts Bar Association is prohibited, under M.G.L. c. 55, from making any contributions or expenditures on behalf of any Massachusetts candidates, as stated in the above-cited provisions. In this instance, the campaign finance activity of the MBA is limited to that permitted its corporate members.

In opinion of the Attorney General, id., in which the statutory provisions relative to corporate participation in Massachusetts campaign financing were interpreted, it was stated that;

"In considering the extent to which a business corporation may make goods and services available to candidates or political committees the meaning of the phrase "anything of value, as used in G.L. c. 55, § 8, is of critical importance..." of particular significance is the definition of the term contribution in G.L. c. 55 § 1, where the word is said to include any "discount or rebate not available to other candidates for the same office and to the general public." The Massachusetts statutory scheme does not prohibit corporations from selling or renting their facilities, goods and services to candidates for political office or political committees organized on their behalf. Questions arise, however, as to the remuneration that the corporations must receive in return for the goods or services provided. It is my opinion that corporations may not offer those goods or services without charge and must charge a rate such that no discount or rebate is offered to any candidate or committee which is not available to other candidates for the same office and to the general public. Accordingly, Massachusetts business corporations can allow utilization of their meeting rooms, their equipment, including telephones, and their office supplies, including stationery, for candidate-related political purposes only where they receive (such) compensation for those goods or services."

Keeping the above discussion in mind, I will now turn to answering the more specific questions posed in your letter, as well as in subsequent discussions with representatives of the Massachusetts LAW PAC.

You have proposed a procedure whereby the MBA dues statements be used to solicit contributions from its members, and contributions received by the MBA. However, solicitation on a dues statement bearing the name of the MBA and the accounting procedure you have described would result in the solicitation and receipt of contributions by a corporate-based association. That type of conduct would result in the Massachusetts Bar Association itself functioning as a political committee, which is not permitted under c. 55.

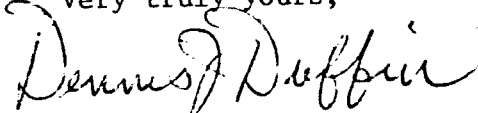
As cited above it would be permissible for the Massachusetts Bar Association to render services, and provide goods to the Massachusetts LAWPAAC, provided the MBA is compensated by the Massachusetts LAWPAAC at a fair market value for those costs. Additionally, if the MBA is going to allow Massachusetts LAWPAAC to utilize its mailing list, the MBA must be fairly compensated. And if you intend on including a Massachusetts LAWPAAC solicitation within a mailing issued by the MBA, the renumarated compensation must reflect all aspects of the things of value the MASS LAWPAAC has received from the MBA, to ensure that no prohibited corporate contribution has occurred.

M.G.L. c. 55 does not restrict the right of corporate officers and employees to endorse candidates to solicit contributions, and to form multi-candidate committees. Indeed, those individual rights are protected by the First and Fourteenth Amendments of the United States Constitution, and our statute does not restrict those rights. The proscription contained in c. 55 applies to the activities of business corporations themselves, and as discussed, associations whose membership is comprised of those corporations.

To conclude, it is my opinion that the MBA may not use its actual dues statement to solicit contributions on behalf of the Massachusetts LAWPAAC, nor may the MBA be used as a vehicle to receive political contributions. However, the MBA may provide goods and services to the Massachusetts LAWPAAC provided it is compensated at a fair market value so that no prohibited corporate contribution results.

If I may be of further assistance, please don't hesitate to contact me.

Very truly yours,



Dennis J. Duffin
Director

DJD/ba

cc: Ed Smith